

JPRS 77734

2 April 1981

Worldwide Report

LAW OF THE SEA

No. 147

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RADIO CRITICIZES U.S. ATTITUDE ON LAW OF SEA

BK171226 Delhi General Overseas Service in English 1015 GMT 17 Mar 81

[Commentary by S. Sahay of the Delhi STATESMAN]

[Text] The Law of the Sea Conference which began in New York on March 9th with the earlier expectation of finalizing the draft convention has proved to be a nonstarter. The reason is simple: The Reagan administration has willed that this be so. It has instructed the American delegation to the conference to seek to ensure that negotiation does not end at the present session of the conference pending a policy review by the U.S. Government.

UN Secretary General Kurt Waldheim has expressed his deep regret over the new development, and, subsequently, American officials have tried to explain that this is by no means an extraordinary measure.

This explanation cannot be taken at its face value. The fact is that prospective American miners of the deep seabed have been agitating that the Carter administration has given away too much already and that the compromise arrived at the Law of the Sea Conference has put too much fetters on them.

What has been the compromise formula? Simply put, the draft convention envisages a parallel system in which a prospective mine--a state or a company--will offer two mining sites, one to be allocated to the miner and the other to be reserved to be exploited by (?enterprise) the executive arm of the proposed international seabed authority. There are detailed provisions about the supply of technical know-how by miners to (?enterprise) and how funds are to be raised.

What needs to be borne in mind is that the USA has already adopted its own national legislation, called the deep seabed hard mineral resources act. It assumes that the law of the sea negotiations may not be completed in the near future. As [word indistinct] as they are, much time would elapse before an international regime is established. Further--and this is the point--potential investors cannot work in an atmosphere of uncertainty, especially when any development of technology required for the exploitation and recovery of hard mineral resources will require substantial investment for many years before commercial production can occur.

The U.S. act therefore establishes an interim legal regime to allow its nationals to develop the right kind of technology and to go ahead with actual or potential exploitation until the law of the sea treaty comes into force with respect to the USA. The self-imposed limitation is that no license will be issued before June this year and no exploitation take place before the 1st of January 1988. The dates, one may emphasize, are related to the state of U.S. technology. The Federal Republic of Germany has passed a similar legislation; the United Kingdom has already introduced a bill; and Belgium, France and Japan are in the process of doing so.

The American legislation envisages the farming out of mines among the nations, which can mean only developed nations. It is clear, therefore, that as far as deep seabed mining is concerned the USA has no great stake in having the law of the sea treaty, except perhaps the desirability of internally legalizing the process, nor have the other advanced nations.

Militarily, the USA has better reason to go in for the law of the sea treaty. After all, the uniform expansion of the territorial sea limit to 12 miles as has already been done by many nations would affect about 100 straits. In most of these, the USA is vitally interested, because it wants smooth passage of its warships and overflights. The lack of an international treaty can cause problems.

All in all, until the USA is able to reorient its policy, the fate of the Law of the Sea Convention will hang in the balance. What the attitude of the Third World, which has labored for 10 years over the draft convention, will be remains to be seen; but it cannot be tolerated if the USA makes major changes in the compromise already arrived at or wholly scuttles the proposed treaty.

CSO: 5200

GUIDELINES FOR 200-MILE ZONE

Manila DAILY EXPRESS in English 11 Mar 81 p 14

[Text]

FOREIGN ships entering the country's 200-mile exclusive economic zone (EEZ) will have to observe new navigational rules and other restrictions which the government may impose from time to time for security reasons or to protect national interests.

The rules are contained in guidelines issued by the Ministry of Natural Resources which is implementing a decree (PD 1599) declaring the EEZ.

Under EEZ provisions, the government can prohibit or stop innocent passage of commercial vessels to protect national interests and safeguard national security.

It can also detain ships found violating conditions to which they are subject while entering the EEZ.

Foreign vessels allowed to pass through the EEZ are expected to observe laws and rules enforced in the country and the provisions of international laws, especially those pertaining to transportation and navigation.

Commercial ships that are allowed innocent passage should belong to a country which maintains friendly relations with the Philippines.

Passage to and from Philippine ports to load, discharge cargo, refuelling, undertake necessary repairs and

visits by tourist ships are allowed.

Also to be admitted to the EEZ are ships in distress and those seeking safety or those that undergo force majeure situations.

Foreign commercial ships who have to pass through restricted areas of the EEZ may request permission from Philippine authorities at least two weeks before passage.

For foreign nuclear ships and aircraft, including warships and military aircraft, necessary authorization from Philippine authorities will be strictly required and must certify appropriate report on the safety of the nuclear equipment or installations on board the ship or aircraft.

E. M. Santos

NEW LEGISLATION ON CONTROLLING POLLUTION

Colombo THE CEYLON DAILY NEWS in English 24 Feb 81 p 5

[Text] Chairman, National Paper Corporation Y. G. Edwards, told me at an interview at his Batticaloa residence recently that the Government will introduce legislation shortly to control pollution of the environment.

Mr Edwards said that the Paper Mills was laced with the problem of effluent disposal. One way of controlling it is by recovering a certain per cent of chemicals used in the process. It would ensure a big saving in cost too. He said that towards this end a chemical recovery plant has been installed at Embilipitiya Paper Mills already, and that in order to optimise performance of this plant, an agreement had been signed with the suppliers of this machinery recently. Mr Edwards said that once the plant is in full production, seventy five per cent of the chemicals could be recovered. He said that other effluents could also be treated before disposal. Mr Edwards said that it is proposed to install a clarifier so that all the solids in the effluent water is also treated. A certain percentage of this water can be recycled and the balance released. He said that the water thus released outside could be utilised by farmers for agricultural purposes. Mr Edwards said that three million gallons of water is used by each of the two Paper Mills in Sri Lanka daily, and by the above process a reasonable quantity of water could be made available for paddy cultivation. Once this program is completed, there will be no pollution of the environment both at Valaichchenai and Embilipitiya Paper Mills.

He said that during his recent visit to the Continent he had visited some of the largest paper mills in the world and they too had adopted this method of effluent control successfully. He said he had met representatives of the West German Government and that they had agreed to finance the entire cost of consolidating the Valaichchenai Paper Mills at a cost of Rupees One hundred and fifty three million. This programme he said will be undertaken as early as possible and its implementation would help achieve 100% rated capacity viz 22,000 tons per year.

CSO: 5000

BRIEFS

U.S. SCORED FOR OBSTRUCTIONS--Hanoi, 20 Mar (VNA)--Le Kim Chung, Vietnamese head delegate to the third UN Conference on the Law of the Sea, on March 17 criticized the United States for obstructing the adoption of a draft convention. Recalling that the three previous U.S. administrations had contributed to results obtained so far, Le Kim Chung said that the Reagan administration had not shown any good will in current negotiations. He said that the monopolist circles had revealed their bad intention through legislation concerning the starting date for future exploitation activities, through the rumours about "mini-conventions" to be negotiated among some Western countries, and through present efforts to put off indefinitely the work of the conference. Le Kim Chung pointed out that Vietnam, as a non-aligned country, would act in conformity with the appeal of the recent Non-Aligned Foreign Ministerial Conference in New Delhi in defence of the interests of the developing countries. He voiced support for the stand of the Group of 77 to carry on with the conference on the basis of the agenda adopted towards the end of the ninth session, by temporarily leaving out the issue of protecting investments to be made before the convention takes effect. [Text] [OW200815 Hanoi VNA in English 0727 GMT 20 Mar 81]

CSO: 5200

DELEGATE CRITICIZES U.S. STAND ON LAW OF SEA

AU191046 Sofia BTA in English 0909 GMT 19 Mar 81

[Report on statement by Aleksandur Yankov, Bulgaria's UN delegate at Law of Sea Conference in New York on 19 March]

[Text] New York, 19 Mar (BTA)--Mr Aleksandur Yankov, Bulgaria's representative at the UN Conference on the Law of the Sea, emphasized yesterday that the convention draft obtained through so much work, year-round efforts and mutual compromise, was really a good basis for an all-round settling of the world ocean regimen. And it is namely because of that now that the change in the conduct of the new U.S. Government sounded as a challenge to the United Nations and to all states which took an active part in the working out of the convention draft, he said.

The Bulgarian representative condemned the actions of the United States and pointed out that they were in absolute contrast even to the most elementary norms of holding international negotiations. He said: "It is namely because of this reason that not a single voice of support or even justifying of the U.S. stand was heard at the conference".

On behalf of Bulgaria Mr Aleksandur Yankov backed up the demands of the developing countries and of the prevailing majority of the participants in the session that the work of the conference continue in accordance with the worked out agenda so that negotiations can be over in time and the convention of the law of the Sea be signed already before the end of this year.

CSO: 5200

'CRUSHING' CRITICISMS OF U.S. AT LOS CONFERENCE

Signing Treaty Favored

AU201040 Prague RUDE PRAVO in Czech 19 Mar 81 p 7

[CTK report: "Criticism of Washington's Position; UN Conference on the Law of the Sea"]

[Text] New York, 18 Mar (CTK)--At the Tuesday session of the UN Conference on the Law of the Sea, representatives of socialist, nonaligned and Western countries, all spoke in favor of concluding and signing an international treaty on using the wealth of world seas and oceans. At the same time they condemned the destructive stance of the U.S. delegation, which enforces for American monopolies unjustified prerogatives in extracting minerals from the seabed.

Semen Kozirev, Soviet deputy minister of foreign affairs, criticized Washington's demand for a "reassessment" of the provisionally approved draft treaty. The Soviet Union, too, is not fully satisfied with all proposed provisions of the treaty; nevertheless, it is ready to accept them because the treaty will constitute a beneficial instrument for strengthening peace and law on all world seas. The United States' unilateral action at the conference is nothing but a manifestation of an ill-considered attitude toward the international conference and the whole international public.

Speaking on behalf of the so-called Group of 77, which comprises 121 developing countries, Ugandan representative Olara Otunnu declared that the United States will be the only one to bear the responsibility should the conference founder.

The U.S. position was also criticized by representatives of Western states. For instance, Australian representative Keith Brennan declared that Washington's stance may have unforeseeable consequences. Speaking on behalf of five northern countries, Iceland delegate Hans Andersen demanded that the United States refrain from any demands for changes in the draft treaty. A similar position was assumed by Dutch delegate W. Riphagen, who spoke on behalf of the 10 countries of the European Economic Community.

In defiance of such crushing criticism, the chief of the U.S. delegation confirmed his negative attitude toward signing the proposed treaty, allegedly for as long as his government's final position is not known.

Bratislava 'PRAVDA' Criticism

LD181012 Prague CTK in English 0801 GMT 18 Mar 81

[Text] Bratislava, 18 Mar (CTEKA)--The action of the U.S. administration at the International Conference of the Law of the Sea cannot be justified, the Slovak daily PRAVDA said today.

Commenting on the recalling of the head of the U.S. delegation to the conference because of concessions made by the United States in negotiations on a treaty under President Carter, the daily said that by the action the new U.S. administration not only tramples on the accords signed by its predecessors and on the joint, many-year effort of representatives of almost all countries of the world, but at the same time it throws doubt on its own credibility in international negotiations.

The Reagan administration's shocking action reflects the effort of North American multinational monopolies to further appropriate to themselves the natural wealth of the seas, without any restrictions of international legal standards. This would mean not only denial of the rights of a majority to the common wealth, but also further endangerment of the environment of our planet, which monopolies, seeking only profits, do not like to take into consideration, the daily stressed.

CSO: 5200

CHIEF DELEGATE MARINESCU ADDRESSES LOS CONFERENCE

AU182045 Bucharest AGFPRPRES in English 1940 GMT 18 Mar 81

[Text] New York, 18 Mar (ACFPRPRES)--The UN Law of the Sea Conference taking place in New York was addressed by Romanian chief delegate, Ambassador Teodor Marinescu, Romania's permanent representative to the UN, who pointed out that Romania, as a member of the Group of the 77 considered that the draft convention, whose fundamental purpose is the turning to advantage of the resources and possibilities of seas and oceans--the common patrimony of mankind--should reflect the interests of all states, especially of the developing countries which make up the big majority of the world's peoples.

In connection with the works of the conference, the Romanian representative stressed that their organization should be subordinated to coming to a generally acceptable text, while considering the interests and standpoints of all countries. The Romanian delegation--the speaker stated--wishes, together with most of the other delegations, that the conference proceedings conclude with positive results the soonest possible. Romania, just as other states, the speaker said, considers that the problems on which negotiations should be continued in order to reach generally acceptable solutions include those referring to the delimitation of the maritime spaces between the states with adjacent or opposing shores, the access of the countries having no littoral or of the disadvantaged ones to the piscicultural resources, the passage of foreign ships through territorial sea, certain aspects related to final clauses, especially the states' right to reserve with reference to certain provisions of the new convention.

In conclusion, the Romanian representative expressed the determination of Romania's delegation to actively participate in negotiations, in cooperation with the other delegations, and to make full contribution for the conference to attain its target, that is, the working out of a draft convention reflecting all participating countries' interests.

CSO: 5200

BRAZIL

BRIEFS

MINISTER SEES LAW BENEFITS--Rio de Janeiro, 20 Mar (AFP)--Brazilian Navy Minister Adm Maximiano Eduardo da Fonseca asserted here today that, although he had not learned the contents of the U.S. Government proposal to be submitted to the Law of Sea Conference in Caracas, the agreement which will be signed during that conference is ideal for Brazil. The minister added that according to the agreement Brazil will have a 12-mile territorial sea (and an) exclusive 200-mile economic zone, which would be quite advantageous since Brazil will be able to exploit maritime resources within this area without incurring major expenses for the navy. The admiral added that the funds for the navy are scarce at present due to the difficult economic situation of the country. [Text] [PY211703 Paris AFP in Spanish 0036 GMT 21 Mar 81]

CSO: 5200

BRIEFS

HAVANA CITES ENVOY SPEECH--United Nations--Cuba's vice minister of foreign relations, Pelegrin Torras, has warned of the possibility that the United States will ultimately destroy the gains achieved so far by the UN Conference on the Law of the Sea. In a speech yesterday to the conference's plenum, the head of the Cuban delegation unmasked the alleged lack of familiarity claimed by the administration of President Ronald Reagan concerning the draft convention that has been the object of intense negotiations for 7 years. The position of the new U.S. administration, Pelegrin Torras said, responds to the interests of U.S. mining consortia which want unlimited exploitation of the seabeds. [Text] [PL181752 Havana Domestic Service in Spanish 1700 GMT 18 Mar 81]

CSO: 5200

U.S. POSTURE AT LAW OF SEA CONFERENCE VIEWED

'Unceremonious Defiance'

LD182126 Moscow World Service in English 1400 GMT 18 Mar 81

[Text] A United States representative at the United Nations Law of the Sea Conference has declared that the American administration will not abide by the earlier agreement to conclude a convention that will provide a basis for the international regulation of the world oceans' development. Here is comment by Igor Penchenko and this is what he writes:

The American administration's unceremonious defiance of the interests of 150 countries, participants in the conference, and its decline to abide by the earlier given commitment led this major international forum into a deadlock. But the White House is not confused. Just a few days before the opening of the conference it warned that it intends to reconsider its attitude to the convention's wording despite the fact that it had been agreed upon and approved by the American side.

What is it that the United States does not like in the draft convention? The American corporations are displeased most of all by the provision that call for putting the extraction of natural resources from the ocean bed in international waters under international control. On this matter the United States doesn't want to assume any commitment at all. It prefers to act by a traditional imperialist principle of the strongest taking the bigger share. Naturally the developing countries are weak industrially to compete against the American shark.

The draft convention is in the interests of a large number of states. The approval of this document would undoubtedly contribute to international cooperation, trust and peace. In the meantime Washington egotistically seeks to gain one-sided advantages. Arbitrarily and quite illegally the United States wants for itself privileges to exploit the natural wealth of the world oceans. Such one-sided actions are nothing but a disrespect of the conference and the whole of the international community.

The situation has emerged when one country, under the pretext of a new government in office, puts an international forum, universal by nature, under the threat of disruption, and it's now hard to imagine what chaos would set in in international life, if the other countries would act the same way.

[Word indistinct] Washington has behaved so on more than one occasion when it has rejected bilateral and multilateral agreements, if they do not meet the selfish, hegemonistic interests of the United States military and industrial monopolies. It was once said in Wall Street that what is good for the General Motors is good for the United States. And today it looks as if the United States administration wants to make the international community accept a new saying: What is good for the United States is good for the whole world. But isn't that too much?

Disrespect for United Nations

LD181850 Moscow TASS in English 1731 GMT 18 Mar 81

[Text] Moscow, 18 Mar, TASS--TASS political news analyst Yuriy Kornilov writes:

More than 150 states, members of the United Nations Organisation, have been working on a draft convention on the Law of the Sea for seven years. Not long ago, prior to the opening of the U.N. international conference in New York to complete that important work, Washington suddenly made a volte-face and refused to back the already agreed draft, placing in jeopardy the work of the major international forum.

What is the reason? Well, a number of influential American corporations expressed "displeasure" over provisions of the draft which place under international control the production of minerals on the seabed in international waters....

This is only one of the numerous examples which show the United States' offhand, disrespectful attitude to the United Nations and Washington's attempt to apply in that organisation the methods of pressure, threat and blackmail which are widely used by certain U.S. circles on the international arena.

Washington, as is known, stubbornly refused to back many important decisions by the United Nations on problems of curbing the arms race, for which the majority of member-states voted. They in Washington continue to attack the United Nations in connection with its principled stand on the Middle East, and stubbornly reject many resolutions, approved by the majority of countries, on such topical problems as struggle against racial discrimination and apartheid, eradication of the vestiges of colonialism, and establishment of a new international economic order. And what can one say about the attempts by the United States, which uses apparently false pretexts and acting contrary to the decisions of the session of the U.N. General Assembly, to thwart a conference designed to work out an agreement on turning the Indian Ocean into a peace zone, scheduled to be held in Colombo this year? What can one say about the fact that the U.S. authorities, totally ignoring the appropriate resolutions and calls of the United Nations, continue to connive with the criminals and terrorists who do not stop hostile actions as regards New York-based foreign missions?

In other words, Washington's line in respect to the United Nations is boiled down to the following: If decisions by that organisation, even if they are approved by the majority of countries, do not correspond to Washington's plans, it means that it is not Washington but the United Nations which gets out of step, and, in order to "put the matters in order" at the United Nations, the Reagan administration is already going to examine the question of cutting the U.S. contribution to the U.N. budget. Jeanne Kirkpatrick, the recently-appointed U.S. permanent representative at the United Nations, launched a barrage of crude and tactless attacks on the community of nations at a gathering of the Zionist 'B'nai B'rith Centre, accusing the United Nations of nothing else but "dishonesty" and "hypocrisy". At the same time, it is becoming known that a certain centre on U.S. reforms is being set up in the United States, whose organisers openly back such, so to say, "reforms", which would correspond to the U.S. geopolitical interests....

Well, some people in the United States are obviously nostalgic for the times when the United Nations was regarded in Washington as kind of branch of the State Department. But the times when the U.S. ruling circles could truly operate in the United Nations are gone forever. At present, and it is high time that American foreign policy makers understood this. All attempts to use the language of drill sergeant who scolds an "undisciplined" soldier, with a representative international organisation which unites more than 150 countries look out of place and bombastic, attesting to the fact that Washington is seriously affected by the germs of hegemony and imperial ambitions.

CSO: 5200

GREED SAID REASON FOR U.S. STANCE ON LOS TREATY

LD200052 Moscow Domestic Service in Russian 1945 GMT 19 Mar 81

[Text] The U.S. administration has decided to hold up for an undetermined period the talks on the conclusion of an international treaty on the Law of the Sea. It is reported that the Reagan administration has embarked on a reassessment of the U.S. position at the multilateral talks in New York, where this problem has been under discussion since 1974 under UN auspices.

International affairs journalist Oleg Pilipets notes that when representatives of 15 countries of the world gathered at the last session of the UN Law of the Sea Conference the predominant view was that they could reach an international agreement on this complex problem. There were fairly solid reasons for this view. As a result of many years of endeavor made within the UN framework the participants in these talks had succeeded in drafting a common stance on the international law affecting the seabed and its resources located beyond the continental shelf. The draft treaty envisages, in particular, the establishment of a 12-mile territorial waters zone and also a 200-mile economic zone. Other articles in this document dealt with shipping, navigation at sea and fishing.

The adoption of such an international convention would have opened up the way to a rational use of the resources of the world ocean and would have helped protect the marine environment from pollution. Let us recall that it took almost 10 years of intensive negotiations, in which representatives of three previous U.S. administrations also took part, to reach mutual understanding on the problem being discussed.

It seemed that at last it had been possible to reach agreement for the exploitation of ocean resources to develop on the basis of international cooperation based on mutual advantage and devoid of any discrimination whatsoever. But a change of guard took place in the White House, and America abandoned its former undertakings in a challenging and unceremonious manner. Open calls are now being heard in Washington for the administration to rewrite the agreed draft of the international treaty on the Law of the Sea, so that U.S. monopolies may obtain one-sided advantages in the extraction of minerals from sea depths.

The fact is that the U.S. press published reports that huge deposits of cobalt, nickel, magnesium and copper worth more than \$3 trillion are present on the seabed at great depths. The greedy U.S. businessmen decided to lay their own hands on these natural riches. That is precisely why officialdom in Washington began to muddy the waters at the talks on the Law of the Sea.

Another reason why unprincipled and selfish behavior of this sort by U.S. politicians undermines trust in the United States as a reliable negotiating partner is that people who have taken it into their heads to fish in muddy waters are now calling the tune in the ruling circles of Washington.

ICELAND, GREENLAND, FAEROES WORRIED AS KEY STOCKS THREATENED

Reykjavik NEWS FROM ICELAND in English Mar 81 pp 9-11

[Text]

Since this nation extended its fishing zone to 200 nautical miles in 1976, just tiny foreign catches in Icelandic waters have been authorized — quotas limited to Faroese, Norwegian and Belgian operators. Their combined take of demersal (bottom) species last year inside Icelandic jurisdiction entailed merely 24 thousand tons.

That is trivial indeed in the context of foreign catches from waters surrounding Iceland before 1972, when the resources zone was extended to 50 miles. But worries are mounting here now over the activities of vessels from the EEC countries, just beyond the median line between Iceland and Greenland.

The Herring Stock Has Been Saved

Icelanders point with pride to their far-ranging moves in ocean conservation. A local herring stock has recovered from a collapse. Large-meshed trawls are mandatory. The main haunts of young demersal fish are protected, some permanently and others as the need rises, and major cutbacks in the capelin effort have been ordered.

Even so, there are alarms here today over the prospect that fishing vessels from ports in the EEC region will congregate this year in waters off Greenland. That next-door neighbour of Iceland was granted home rule a couple of years ago by Denmark, which is a member of the European Community.

The shortest distance between Iceland and Greenland is less than 300 kilometres, or around 180 miles.

A Ban on Services Considered

At a recent meeting of the EEC fisheries ministers, West German operators were given the green light for a cod effort off Greenland's east coast this year. The news of this led to a debate in Iceland's Althing (parliament), where Minister of Fisheries Steingrímur Hermannsson (Progressive Party) said that a ban on services here for the German trawlers might be considered.

Although an explanation of this threat was scarcely necessary, Hermannsson said that not having access to Icelandic ports, for supplies and repairs, would amount to a real handicap for the unwelcome European trawlers. If the German operators go forward with their plan, he added, overfishing from stocks needing protection is bound to result.

It is also known that EEC agencies have approved a significant redfish (ocean perch) effort in waters belonging to Greenland. Part of that picture, too, is Denmark's acquiescence to pressure from its EEC partners — in the face of protests in Greenland and warnings from marine biologists. As both stocks migrate far and wide in the North Atlantic, Icelandic and Faroese concern over the

developments is easy to understand.

Naturally, the Greenlanders were the angriest of all. In an interview of recent date with the Reykjavik daily *Þjóðvísun*, organ of the leftist People's Alliance, Jonathan Motasfeldt, head of the Godthaab government, said: "Greenland will sever its ties to the European Community. I plan to introduce a parliamentary bill to that effect."

That blast specifically had reference to the cod issue, which the Greenlanders see as a Danish sellout of their resources to accommodate West German interests. The sentiment behind the politician's words has to be seen in the light of Greenland's critical dependence on economic assistance from Denmark, which in turn can ill afford to offend the German Federal Republic.

Shrimp Grounds May Be Ruined

The dispute between Greenland and Denmark has a number of other angles that Icelandic fisheries planners must address themselves to. One involves choice shrimp grounds located roughly midway between Iceland and Greenland, but the lion's share of this resource may well be northwest of the median line.

Because an Icelandic shrimp trawler discovered these grounds, a few years ago, the feeling here is that operators in this country should be given some precedence when it comes to allocation of this resource. There are fears now that it may be ruined with growing inroads by vessels from Denmark, the Faroes, West Germany, Norway and possibly other nations.

Proper use of it by Greenlandic operators is taken for granted by Icelanders. Norwegian activity in the cited area does not follow from direct ties to the EEC, but from a special arrangement with Denmark.

A Dwindling Stock Threatened by EEC Inroads

The rapid decline of the once-abundant capelin, a pelagic stock migrating extensively through a huge region of the North Atlantic, is a burning issue in Icelandic fisheries circles today. It, too, has an important bearing on catch policies adopted for waters off Greenland.

The Icelandic capelin effort used to be limited to the first few months of the year. But for some time now, the season has lasted from fall until late winter or early spring. A set of recent domestic statistics explains why Icelanders are so worried over the future of this fishery, which became vital after the collapse of the North Atlantic and local herring stocks toward the end of the 1960s.

The Icelandic take in tons:

1975-76:	342,000
1976-77:	659,000
1977-78:	770,000
1978-79:	1,191,000
1979-80:	843,000

Last spring, Iceland and Norway reached an accord on capelin fishing in waters surrounding Jan Mayen, an arctic island roughly 300 miles northeast of this country. That formula was based on the assumption that the Icelandic harvest of the species in the 1980-81 season would come to 650 thousand tons.

But during the summer, there were alarming signs that the stock was far weaker than had been expected. Analysis of data from a research expedition completed in late October gave findings that surprised even the most pessimistic observers: evidence that a drastic effort cutback was necessary (NFI, January).

Unfortunately the Pessimists Were Right

Under pressure from marine biologists, the Icelandic government promptly ordered that the capelin take in 1980-81 should be held to 460 thousand tons. But it was understood that the decision might be reviewed in the light of findings from a two-vessel monitoring mission, set for the first few weeks of 1981.

While the interpretation of the data from that research was still in progress at the time of this writing, nothing suggested that the specialists' earlier opinion was unduly pessimistic. All the same, it seemed likely that an extra take of 50-60 thousand tons might be approved for the end of the season — for collecting roe, and catches earmarked for freezing.

Capelin has always been utilized almost exclusively as feedstock for reduction plants.

The declining fortunes of Icelandic capelin operators since the spring of 1979, and particularly the development in recent months, obviously constitute a massive setback — for both the specialized fleet and the national economy as a whole. And the capelin trouble threatens to grow worse.

There are reports that well-equipped Danish vessels, possibly aided by factory ships and freighters, will be active in capelin waters between Greenland and Iceland next summer. Similar moves by other EEC nations — not least Britain, Ireland and France — are distinct possibilities.

Few Signs of Recovery

Marine biologists seem to agree that the capelin year-stock reaching maturity in the coming summer will be somewhat more robust than the one being fished from now (a single-spawning life cycle is characteristic for the

species). But there are no signs of a recovery permitting the overall effort level that seems probable.

Icelanders consider the capelin stock — that is, the migrations ranging from Jan Mayen to Greenland — to be pretty much their own. Apart from the economic realities, the justification for such reasoning is that the spawning grounds are in nearby waters.

Although the capelin migration between Iceland and Greenland next summer will be dominated by a specific year-stock, it is believed that a notable proportion will be from younger generations. Inroads into them, all here realize, can only spell future trouble for the hard-pressed industry.

No Cards to Play

In conversations with newsmen during recent weeks, Icelandic political leaders, marine biologists and fishing operators have expressed similar fears of the immediate prospect for the capelin haunts to the northwest. According to some of them, a massive EEC onslaught on the capelin stock — something to the tune of scores of vessels — might practically destroy it in just one summer.

Said one: "It seems that a lot of arctic drift ice floating in the right direction is about the only thing that can save our capelin." What he meant was that Ireland has no cards to play against the EEC in this matter — at any rate, no fisheries accord that could serve as a framework for negotiations.

There have been meetings of Icelandic fisheries officials and their EEC counterparts, but thus far without any constructive results. One thing is sure, however — that all EEC deliberations linked to the Greenland issues will be watched with interest here.

NEWSPAPERS VIEW LAW OF SEA CONFERENCE ISSUES

'DIE WELT' Comment

DW131052 Bonn DIE WELT in German 10 Mar 81 p 11

[Report by Bonn correspondent Heinz Heck]

[Text] The Bonn union faction, like the Federal Government, has considerable reservations against the Law of the Sea convention in its present form at the beginning of the 10th conference round yesterday. CDU Bundestag Deputy Peter Kittelmann mainly criticized the intended restrictive regulation for deep sea mining.

The individual points are: production restrictions to the advantage of terrestrial mining, unacceptable conditions with regard to compulsory technology transfer (to the advantage of developing countries), exaggerated financial burdens for private sea mining firms, as well as the establishment of a super authority whose work would be expensive and inefficient. All this makes it impossible for German industry to take part in deep sea mining at the present time.

Kittelmann recalled that these planned regulations contradict everything the German Bundestag has formulated, and "with a very large majority," as criteria for a Law of the Sea conference. The Federal Government is asked not to make any concessions violating the core of free access to the deep sea treasures.

Bonn should, therefore, fully support the attempt by the new American negotiating leaders "to reconsider and call into question the significant current results in the field of deep sea mining." Simultaneously, a joint attitude of all industrial states should be aimed for in the final phase of the conference.

With a view to the signal-like effect the results of the conference will have for a new world economic system, Kittelmann advises the German foreign minister to visit the conference either on the occasion of his present visit to the United States or in April.

'FRANKFURTER ALLGEMEINE' Comment

DW131129 Frankfurt FRANKFURTER ALLGEMEINE in German 10 Mar 81 p 10

[Dr Rudolf Dolzer article: "On the Coasts and on the Seabed"]

[Excerpt] The current [Law of the Sea] conference would have had plenty of problems anyway due to the questions that have not yet been settled. Rather unexpectedly the conference is now facing even much more difficult problems.

It has been known since the middle of last week that the new U.S. Government does not feel committed to the results attained in the preceding nine sessions. In terms of negotiating technique, the draft now available had been reached by way of "consensus." The points had been debated until no conference participant expressly raised any more objections. The U.S. delegation, within the framework of this procedure, did not come out against the results achieved thus far. Last week, however, the State Department in Washington announced that in line with the new administration's views, it is impossible to wind up the objective negotiations by the end of the 10th session which is now beginning. At the moment, the administration is still in the process of reviewing the "serious problems" raised by the course and the results of the conference to date.

The Americans will raise no objection to the intention of enhancing considerably the rights of the coastal states in the regions close to the coasts, in accordance with the convention, to that extent, the United States, because of its geographical location, is one of the states which would gain advantages by the new law. Matters are different where the future utilization of the seabed is involved. For the first time, it is planned for this sector that an international organization extract, process and market raw materials. To the extent that private enterprises will be allowed to operate in this field, they are obligated under the present draft to cede their technologies (including those of their suppliers) to the international authority at "fair and reasonable" prices. What this envisages, therefore, is a forcible transfer of private property--a novelty in international life with respect to policies in private property.

While an obligatory transfer through the international authority as the administrator of the treasures of the sea (the "common heritage of mankind") might still be somewhat justifiable by the categories of the hitherto valid, liberal international economic system, this is no longer possible for the additional obligation that is envisaged, namely, that such property be turned over to competitive enterprises from third countries as well.

By all appearances the Reagan administration reserves for itself the right to reject this system of dirigisme and protectionism (or some parts of it) as unacceptable. What the Americans might have in mind is the effects of the system in the Law of the Sea itself and, beyond that, the consequences which concessions in system policy [ordnungspolitisch] of this nature will probably have for the general future organization of international economic relations.

After the extensive and lengthy negotiations which led to the results attained thus far, a change in the U.S. stance will largely meet with lack of understanding at the conference. Nevertheless, the Americans may succeed in bringing about some changes even now, for two reasons: On the one hand, the increase in authorizations in the coastal area as envisaged in the convention is as good as sure for the Americans even now. The results attained at the conference in that respect have been largely accepted internationally and have already prevailed considerably in practice. For these reasons, the U.S. negotiating position is favorable in this respect. On the other hand, it is doubtful because of the circumstances of power policy and geography, whether a new Law of the Sea convention could attain practical significance unless it were approved by the United States.

During the negotiations to date, the United States concentrated, above all, on the military consequences of a new convention, the regulations on straits. Since a regulation favorable to the Americans has been established on this point, the Carter administration was obviously prepared to accept solutions for the seabed which cannot particularly be regarded as a framework for an attitude determined by the market. It was almost inevitable that the new government's absolute primacy given to the policy of the market economy determining the system would call this position into question. It is obvious what significance such an amendment of the draft of the convention along the lines of this reorientation would entail, particularly for the Federal Republic of Germany, which is oriented toward technology and is poor in raw materials.

FRG DELEGATION ADVISER VIEWS NEXT LOS SESSION

Hamburg AUSSENPOLITIK in German No 1, 1981, pp 15-27

[Article by Dr Uwe Jenisch, adviser for the FRG delegation to the Law of the Sea Conference: "The LOS Conference on the Eve of Its Tenth Session"]

[Text] The Third Law of the Sea (LOS) Conference of the United Nations is facing its tenth session, which will begin on 4 March 1981 in New York. Since the two half-sessions of last year, the conference has now entered its final political stages. Compromises have been found on various questions, above all with respect to the extension and the regime of the continental-shelf zones. Assuming that the matter rests with last year's draft convention, the following assessments of it are made by Dr Uwe Jenisch, of the Schleswig-Holstein Land Ministry for Economy and Transport, who has participated in the sessions as an advisor to the German LOS delegation: Instead of a more equitable distribution of resources and broader opportunities for exploitation of the seas, there will be nationalization of that third of the oceans lying near the coasts, and only a few states with long coasts will profit from this. Included among such states are almost all the industrial countries of the northern hemisphere, but only a relatively few developing countries. Ten states will be given 50 percent of all the economic zones in the world. Because of their geographic situation, the least-developed countries will be cut off from the resources of the seas. Only what is left after the apportionment of the seas would come under the planned Seabed Authority: The deep-sea areas far from the coasts, which comprise about 60 percent of the ocean bottom. Deep-sea mining will then develop chiefly within the zones of national jurisdiction, where one does not need to worry about the Seabed Authority. On this point, American and Soviet views have coincided; opposition came from France and the FRG, among others. The author analyzes the state of negotiations for the law on the sea zones and for the international seabed regime. Then he refers to the significance of the planned Preparatory Commission, which is supposed to put in motion the convention someday, but in which very difficult questions will have to be dealt with first, so that even now there is talk of a conference within the LOS conference. The author gives his personal opinions.

1. Summary Evaluation of the Conference

The Third U. N. LOS Conference, which has been running since 1973, entered its final political stages with its ninth session in 1980. "Be sure, the two half-sessions of the ninth round of negotiations (3 March to 4 April 1980 in New York and 28 July to 29 August 1980 in Geneva) did not achieve their self-imposed goal of further developing the informal negotiating text ICNT (Informal Composite Negotiating Text rev. 2)¹ into a formal draft convention. At the end of the Geneva half-session, the results of the extremely difficult negotiations were compiled in an again revised text, which now bears the designation "Draft Convention on the Law of the Sea--Informal Text."² At the beginning of December 1980 the now unfortunately deceased conference president, Amerasinghe (Sri Lanka), stressed in his "explanatory memorandum" the informal status of the new text, which like its predecessors left room for further informal technical negotiations.³ The delegations from France, Turkey, Zambia, and the FRG questioned whether the new title was objectively justified in view of the many unresolved questions. The majority of the more than 140 states participating had no objections to this upgrading of the title of the text.

The calendar of the conference provides for a tenth session about 6 weeks long, from 9 March to 17 or 24 April 1981 in New York, which is to be set up by an inter-session meeting of the drafting committee. The intensive deliberations of the drafting committee are a strong indication that the LOS conference is nearing its end.⁴ Amerasinghe had announced his intention to formalize the resulting draft convention in the consensus fashion--that is, to wind up the informal negotiations. In a short adjournment following this, the governments are to be given an opportunity for a limited period of time to make formal motions for amendments, which will be passed by a two-thirds majority of votes, before the final version is adopted. The ceremonial signing of the convention is to follow in a short final session, without further technical negotiations, towards the end of 1981 in Caracas. The convention will bear the name "Caracas Convention." From all our experiences to date, this timetable and working plan can also be called into question.

But it is a correct assessment that the LOS conference has found its way to new compromise formulations on some hitherto strongly disputed questions of deep-sea mining, although there may be differing opinions in the evaluation of these compromises. The urging of the United States, the Latin-American states, and some developing countries for a conclusion to the conference has not yet had any success. Nevertheless, the conference is in its final political phase, in which questions of the fair apportionment of resources⁵ and of opportunities for exploiting the seas should give rise once again to fundamental discussions. The call for compensatory monetary payments to the have-not, geographically disadvantaged states is becoming louder, with Nepal and African landlocked states increasingly putting forward legitimate demands.

Theoretically the coming into force of the convention, for which 60 ratifications are required at present, according to Article 308, can happen from the middle of the 1980's on. A Preparatory Commission is to apply the convention provisionally even before its going into effect. If, despite expectations, the conference should collapse or be delayed further, then substantive results--for example,

the establishment of 200-nautical-mile economic zones--would be consolidated further through unilateral declarations of the states or through newly arising common law.

For the contents of the draft convention, let us refer to our earlier periodic reports.⁶ Important negotiational results of the ninth session⁷ can be summarized in the following key statements:

- Extension of the continental-shelf rights of coastal states to 350 nautical miles, or alternatively to a line 100 nautical miles seawards of the 2,500-meter depth line.
- Completion of the work of the Third Committee,⁸ which has confined itself at last "only" to questions of drafting.
- Improved backing for the so-called parallel system on deep-sea mining, under the supervision of the new Seabed Authority; the voting procedure to be used in the Council of the Seabed Authority, the regulations for technology transfer and for the monetary levies as well as for the application procedure are largely completed, without the dirigistic and protectionist character of the deep-sea regime having changed.
- Dispute-settling procedures and final clauses, General Provisions, and a preamble to the convention have been accepted into the draft convention as incontestable versions.⁹

The following key questions which are "officially" disputed are left as tasks for the tenth session:¹⁰

- a) Accession rights for international organizations (the problem of a so-called European Community clause),¹¹ membership rights for independence movements,
- b) details of the Preparatory Commission,¹² including its composition and its functions, and connected with this
- c) interim investment protection¹³ for seabed mining enterprises before the convention goes into effect.

But the general debate at the close of the Geneva session¹⁴ brought up many other substantial problems which are considered by the various delegations as unresolved and which signal a profound dissatisfaction. These include, among others:

- Production control and the compensatory monetary payments of the Seabed Authority, which still have not satisfied many inland producers and African states.
- Criticism by the intermediate and smaller industrial countries concerning inadequate representation on the Council of the Seabed Authority.
- The demarcation provisos for facing and adjoining economic zones and continental-shelf zones, as well as for coastal seas.
- Supervisory powers over fish stocks outside the 200-nautical-mile limit.

- Claims to the right of notification and granting permission for the passage of foreign warships through the coastal sea.
- Regime of the continental shelf seawards of the 200-nautical-mile limit (so-called outer shelf).
- Legal status of the exclusive economic zones (high sea or regime sui generis).
- Definition and rights of the geographical, disadvantaged states.

The territorial and functional implications of the maritime-law reform have not yet become clear to many participants in the conference. The nationalization of the offshore third of the oceans is to the benefit of only a few states with long coasts, among which are almost all the industrial countries of the northern hemisphere and relatively few developing countries. Some 10 states will have 50 percent of all the economic zones in the world. A side effect of this development is its discrimination against very many developing countries in the group of the least developed states of the fourth world, which because of their geographic situation are cut off once and for all from the treasures of the seas (Uganda, Ethiopia, Nepal, Niger, and others). The following table gives an idea of the implications in terms of areas involved for the 200-nautical-mile economic zones, which contain 80 percent of the world's fish stocks, over 90 percent of the marine hydrocarbon deposits, and manganese-nodule reserves of an unknown amount. The extension of the continental shelf beyond 200 nautical miles on the one hand brings additional manganese-nodule reserves and hydrocarbons to states with long coasts, and entails on the other hand a further pushing back of the international area. The Seabed Authority, as the trustee of the "common heritage of mankind," keeps what is left from the apportionment of the seas: The deep-sea regions far from the coasts, which make up about 60 percent of the ocean floor. The red tape resulting from a striving for perfection in the deep-sea system, the high levies, and the compulsory technology transfer involved can easily lead to a situation where deep-sea mining develops within the zones of national jurisdiction. With that, the LOS conference would turn its great goal--to contribute to the more equitable allocation of sea resources--into the opposite of this.

Apportioning of the Seas on the Basis of the Relevant Position of the LOS Conference as of 1980¹⁵

1. Overall figures	in millions of square kilometers	in percent
- Ocean area	361	100
- All 200-nautical-mile zones	129	35.8
- 200-nautical-mile zone and outer edge of continental shelf	146	40.6, estimated
- Submarine ridges and mountains	unknown	unknown
- U. N. Seabed Authority	215	59.4 or less

2. Important blocs	in millions of square kilometers	in percent
- 200 nautical miles, EC, 9 states	about 3	about 1
- 200 nautical miles, EC, 12 states	about 6	about 2
- 200 nautical miles, NATO	about 25	about 8, only North Atlantic
- 200 nautical miles, Warsaw Pact	about 5.5	about 1.5

3. Territorial gains in the sea (only) 200-mile-zone	Listed by ranking in square kilometers	Remarks
1. United States	about 15,000,000 (7,825,000)	With Hawaii and Pacific islands (without Hawaii and Pacific islands)
2. France	11,000,000 (341,000)	With all possessions: French Polynesia, etc. (European France)
3. Great Britain	10,000,000 (2,336,500)	With all possessions (estimated) (Great Britain with Belize, Falkland, etc.)
4. Australia	7,006,500	With Papua New Guinea
5. Indonesia	5,408,600	Only developing country in the top group
6. New Zealand	4,833,000	
7. Canada	4,697,700	Including Hudson Bay
8. Soviet Union	4,490,300	
9. Japan	3,861,100	
10. Brazil	3,168,400	
11. FRG	40,800	North Sea and Baltic

2. State of Negotiations on General Maritime Law/Law on the Sea Zones

2.1 Extension of the System of Laws on the Continental Shelves

The most important alteration in general maritime law concerns the extension and the regime of the continental-shelf zones, which are to be allowed as extra zones of national jurisdiction at the sea bed of the continental shelves even beyond the 200-nautical-mile boundary if the shelves really extend beyond this 200-nautical-mile limit, which is the case for many long-coast states and islands. At the same time, the outer continental-shelf limit marks the beginning of the international "area," where any mining operations are to be under the control of the Sealed Authority.

The problem of the seawards boundary of the continental shelf is economically of significance, since the continental slope contains hydrocarbon reserves which

are estimated at about 40 billion tons in the region outside the 200-nautical-mile limit. In addition, there are considerable manganese-nodule reserves (especially in the Pacific). The Geneva continental-shelf convention of 1958 adopted the technical limit of "exploitability" as the general continental-shelf boundary and thus opened the door for a progressive advancement of the outer continental-shelf boundary into the midst of the seas. Therefore, from the very beginning an unambiguous outer continental-shelf limit was a chief preoccupation of the Third U. N. LOS Conference. In the new draft convention, the exploitation of the "inner" continental shelf and the sea bed within the 200-nautical-mile limit is included in the multipurpose regime of the exclusive economic zone. This is true regardless of the actual water depth. Even the greatest ocean depth--the Mariana Trench, 12,066 meters deep--is a continental shelf in the sense of the law, because it lies within the 200-nautical-mile zone.¹ This ruling shows clearly that the continental shelf of the LOS convention is a legal rather than a geological concept.

Corresponding to its economic zone, the seaboard state has exclusive exploitation rights to the mineral resources therein, including the right to set up and operate scientific facilities. Added to this are substantial privileges in continental-shelf exploration, because the coastal-state licensing and control procedure of Articles 246-255 are applicable in principle even to the outer shelf. With that, for outer-shelf exploration as well the alternative is allowed of the denial of an exploration permit, and moreover any judicial review of this is already excluded on the basis of Article 297, Paragraph 2.

A cosmetic liberalization for exploration in the outer shelf possibly follows from Article 246, Paragraph 6, which allows a right to deny exploration permits only in the case of "designated regions" in which the coastal state has announced detailed exploration plans. Thus, outside these designated regions licensing is to be handled in a more liberal fashion. The practical significance of this liberalization of the exploration system is likely to be minimal, because the coastal state has the power to designate such regions, and the designation decision is likewise not litigable according to Article 297, Paragraph 2.

As for the rest, the sea beyond the outer shelves remains free. As a compensation for this encroachment on the "common heritage of mankind," those states with broad shelves are to pay over a profit levy to the Seabed Authority, which is in the nature of a mere pittance: After 5 free years, the levy obligation begins at a level of 1 percent of the continental-shelf yield, and climbs annually by 1 percent until by the 12th year the maximum limit of 7 percent is reached (Article 82).

Since April 1980, the ICNT rev. 2 has included, in Article 76, a new outer continental-shelf boundary.² Elaborately modified by clauses, several demarcation criteria are offered to the states, but they are given the choice of a maximum limit of 350 nautical miles or else a line 100 nautical miles seawards of the 2,500-meter-deep line. As long as natural constituents of the continental rim are involved, submarine mountains and other elevations of the sea floor are covered by special provisions, which extend even beyond the 350-nautical-mile limit and which are not yet clear in their implications. Disputes over interpretations and demarcations are being introduced once and for all into the deep sea.

The German demand for precise outer continental-shelf boundaries has not prevailed. The German Hydrographic Institute in Hamburg submitted recently new charts for the purpose of at least making visible the implications of the 350-nautical-mile limit. Other charts have already shown the implications of all other continental-shelf demarcation criteria.

The special continental-shelf problems of Sri Lanka--where near the coast a deep trench interrupts its geological connection with a continental-shelf plateau lying further seawards--have appeared in an abstruse document which apparently is to be annexed to the convention under the title of a "statement of understanding."³ Rumor has it that this statement allows continental-shelf claims of Sri Lanka (and of India?) which are on the order of magnitude of 400 to 600 nautical miles in width. It is still a mystery what the justification is for the LOS conference's compliance with the special requests of one country,⁴ and what is to be made of an international convention whose territorial boundary provisions can be changed by collateral clauses.

A continental-shelf boundary commission, consisting of 21 members,⁵ is to settle disputes by means of "binding recommendations"--something which makes it likely that there will be many disputes in the future.

The continental-shelf compromise concerning the outer boundary was reached on the basis of a Soviet-American agreement, which had the support of the "territorialists." A number of Arab states and many geographically disadvantaged states have proclaimed their opposition.

The continental-shelf question is a crucial point in the entire maritime-law reform, because the outer continental-shelf boundary is at the same time the boundary between the national and international zones. The jurisdiction of the Seabed Authority--accordingly, the exploitation of those mineral resources in the deep sea which are accessible on the basis of the parallel system--contracts in volume to the extent that the continental-shelf boundary is pushed outwards: The "common heritage of mankind" and the proceeds of the Seabed Authority which are destined for distribution to the developing countries become smaller. The chances are increased that deep-sea mining will begin within the zones of national jurisdiction, where one does not have to be concerned about the Seabed Authority. On the other hand, the chances of geographically disadvantaged states to raise common-use claims at least in the international zone are likewise decreased. In other words: The continental-shelf question prejudices the compensatory function of the new maritime law in the most negative fashion.

2.2 Individual Problems on the General Maritime Law

The rest of the work of the Second Committee--on General Maritime Law--suffered from the fact that the chairman, Aguilar, convened only a few sessions and did little by himself to encourage the informal negotiations. In the New York half-session, there was an article-by-article reading of the General Maritime Law,⁶ which led to the adoption of the following three changes in the text:

- The provisions on the protection of whales (Article 65) are slightly sharpened

- The right of "hot pursuit" (Article 111) applies also to waters of archipelagos;⁸
- The list of specially protected migratory fish species (Annex I) is extended to cover a certain tuna species.⁹

In the Geneva half-session, the prominent feature was the efforts made to revise the language of the texts.¹⁰ This work resulted in, among other things, a strengthening of the role of the international maritime-commerce organization IMCO [Intergovernmental Maritime Consultative Organization] (London), whose exclusive powers of involvement in questions of ship safety and transport regulation were cleared up following a German request.¹¹

As for the rest, the states reiterated their general positions on maritime law in the general debates at the close of the half-sessions. The multiplicity of requests for changes leads one to expect new technical negotiations for the tenth session.¹²

3. State of Negotiations on the International Seabed Regime

In the ninth session, the first committee came to an agreement in a follow-up session on 22 August 1980 concerning compromise proposals for the most important articles of Part XI (the Area), of Annex III (basic conditions), and of Annex IV (statute of the Enterprise), and these entered into the draft convention in summary form in various documents.¹ From the plenary debate,² further changes in these texts cannot be ruled out, even though the solution package as a whole was approved by the Group of 77, by the Soviet Union, and by the United States. Opposition by the FRG and France relates to functions with respect to raw-material policy, financial arrangements, and technology transfer.

3.1 Raw-material Policy

According to Articles 150 and 151, the functions of the Seabed Authority relating to mineral policy continue to be characterized by protection for the inland producer countries. In place of the free competition between inland and seabed mining desired by the important industrial countries, seabed mining appears in an only subsidiary role as a sort of auxiliary function of inland mining, and it is limited in volume to 60 percent of the annual growth rate of worldwide nickel consumption. Meanwhile, the production-volume restriction of Article 151, which was unsuitable on regulative grounds, has been "liberalized" to the extent that in the initial phase of seabed mining about five mining units are permissible, with a maximum annual output of 46,500 tons of nickel. This is based on a nickel-use growth rate of 3 percent annually. Adjustments to fit the actual consumption are possible. For its initial mining operation, the Enterprise is given an amount totaling 38,000 tons of nickel. The right of the Seabed Authority to sole representation--to participate in international raw-material agreements, on the basis of Article 151, Paragraph 1, on behalf of the collective deep-sea production and in doing so to also represent the production of the private or national firms--was weakened, in that the representation right comes into play only when both producers and consumer countries are involved in this raw-material agreement. At the request of the inland producers (especially Australia and Canada), a market access clause was added in Article 150, Paragraph 1, which

prohibits the states from making the importing of seabed-mined products more favorable (for example, through tariffs and quotas) than is the case for the lowest-priced inland producers. This provision represents a compromise between the fear the inland producers have of losing traditional customer countries and the interests of the consuming countries in the most secure and low-priced mineral supply possible. But a general ban on subsidizing which was demanded by Australia for all national deep-sea mining has not prevailed.

Compensatory monetary payments to mineral-exporting developing countries, which could suffer economic losses because of the seabed mining, must be agreed on unanimously in the Council of the Seabed Authority.³ Moreover, those developing countries and peoples which have not yet achieved their independence (that is, liberation movements) are to have a share in the revenues of the Seabed Authority.⁴ This is something which the industrial countries continue to disapprove of.

3.2 Council of the Seabed Authority

The Council of the Seabed Authority, which is responsible for routine decisions on seabed mining, remained unchanged in its composition of 36 states, even though the smaller industrial countries--such as Sweden and the Netherlands, for example--pressed very strongly for an expansion of the Council by two to four members.⁵ The Group of 77 lays claim to 25 seats in the Council. Of exceptional significance are the voting rules of the Council (Article 161), which were disputed between industrial countries and developing countries to the very end. The compromise reached provides for four categories of decisions by the Council, which require differing majorities:⁶

1. Simple majority for procedural decisions.
2. Two-thirds majority for practical problems connected with the internal functioning of the separate organs of the Seabed Authority.
3. Three-fourths majority for practical problems connected with the executive powers of the Authority, including among other things the awarding of production permits.
4. Consensus for the most important executive powers: Decisions with respect to raw-material policy for the protection of inland producers from economic losses; enactment of the practically very important implementing regulations; alterations of Part XI (deep-sea regime) of the convention; other cases not regulated.

For the first time in a U. N. convention, the concept of a "consensus" as "the absence of a formal objection" and the conciliation procedure leading up to a consensus are defined (Article 161, Paragraph 7e)--something which is likely to have future effects on other U. N. conventions. At all events, according to this concept the deep-sea system can function only when none of the 36 members of the Council make use of his protest right (veto right). On the one hand, this "pressure for consensus" provides to the industrial countries protection against being outvoted, but on the other hand it represents a constant danger to the functioning of the entire system.

Also new is the complex two-stage procedure for the awarding of mining contracts to firms. This so-called "split contract system"⁵ provides first of all for awarding a contract on the basis of Article 6, Annex II after prior action by the legal-technical commission of the Council of the Seabed Authority, where the majorities needed for approval--in contrast to the satisfactorily settled majorities of the Council (partially automatic contract bestowal within fixed time limits)--still have to be clarified.⁷ In this contract awarding, consideration is to be given to the general qualifications of the applicant as well as to the anti-monopoly proviso, which is formulated so that no applicant may exploit more than 2 percent of the seabed. The contract award does not yet give the right to start production. This happens at a second stage, in the form of a production permit⁸ given by the Authority, which requires the three-fourths majority of the Council. The production permit is issued with due regard for the production-volume restriction of Article 151.

3.3 Technology Transfer and Financial Arrangements

The very far-reaching provisions for technology transfer in Article 5, Annex II, remain unchanged. Now as before, the obligation to transfer technology, against payment, to the Enterprise under fair and commercial terms includes not only the technology of the applicant himself, but also that of subcontractors, which the applicant normally cannot have at his disposal. In the so-called "Brazil clause," applicants are also obligated to transfer technology to various developing countries whenever these want to become involved (within the framework of the parallel system) in the reserved mining area of the Enterprise. The technology obligations are in effect for 10 years following the start of commercial production by the Enterprise. They extend also to smelting technology. A German proposal on the definition of the concepts "fair and reasonable commercial terms and conditions" was included in the conference protocol.⁹

The organizing statute for the Enterprise of the Seabed Authority is formulated anew in Annex IV. The demand of the industrial countries that the Enterprise be organized as a relatively independent commercial undertaking has been satisfied to some extent. The Enterprise is to be exempted from all contributions to the Authority for 10 years, and thus it is being given an additional competition advantage. The scheme for financing the Enterprise through half interest-free and half interest-bearing loans on the part of the ratifying states in accordance with the U. N. formula (FRG's share: about 8 percent) met with hardly any opposition. The Preparatory Commission will determine the initial costs for the Enterprise, which are estimated at about \$1 billion.

The amounts of the four different levies--determined in a complicated way--which a mining unit has to pay to the Seabed Authority (Article 13, Annex III) have not been changed further as to their content. The United States, Great Britain, and the Group of 77 expressly assented to the size of these levies, so that alternative ideas of other industrial states, such as for example the FRG, Japan, France, and Belgium, met with failure.

3.4 Revision Conference

The possibility of a revision of the international law for the entire seabed mining system inclusive of the parallel system is provided for in Article 155,

in the form that after a 20-year period a revision conference on deep-sea mining can decide on changes in the mining system by a two-thirds majority, which in the event of their ratification by these states will enter into force for all states. The constitutional and economic misgivings of many industrial states have not been enough as yet to weaken or eliminate this clause, which is contrary to constitutional-state principles. In Western democracies, only the parliaments can make international-law treaties effective, by means of ratification. Article 155 entails practically supranational majority decisions having a binding effect on all states--a provision which the community of states is not yet ready for.

4. Preparatory Commission and Interim Legal Protection for Seabed Mining

In the initial stages, new international organizations are usually set up by (interim) preparatory commissions. Therefore the establishment of a Preparatory Commission is mentioned as one aspect of the problem in the provisions on the convention's coming into force.¹ At the same time, this touches on the linkage between the LOS Convention and national interim laws on the provisional regulation of deep-sea mining. In the ninth session, the informal plenum of the conference concerned itself only in the Geneva half-session--and even then only briefly--with the proposals for a Preparatory Commission, whose most important organizational aspects are contained in a working paper of 3 March 1980.² The idea of a preparatory commission--preferably on the model of the preparatory commission of the United Nations, established in 1945³--generally met with approval.

An informal proposal by the conference president⁴ provides that by a resolution of the conference the Preparatory Commission should be set up as a forerunner of the International Seabed Authority.

Thus the Preparatory Commission could become the predecessor, in terms of personnel and organization, for the Seabed Authority. According to the proposals under consideration, the Preparatory Commission will exist from the time of the 50th signature of the convention up to the going into effect of this convention. It will be composed of one representative each from the signatory or accession states. The Preparatory Commission will choose its own chairman and enact its own procedural rules, for example on the voting procedure (consensus principle?). Its financing is to come about through redeemable loans from the United Nations. It will be permitted to have its own subsidiary organs. The provisional list of functions of the Preparatory Commission is described as follows:

- a) Initial convening of the Assembly of the Seabed Authority,
- b) provisional agenda and recommendations for the initial session of the Council,
- c) preparation of the procedural and financial arrangements for Assembly and Council,
- d) studies and recommendations for the initial budget of the Seabed Authority and the Enterprise,
- e) proposals for cooperation with other U. N. organizations,

f) recommendations for a secretariat, inclusive of the statute for the administrative staff,

g) studies and recommendations on the question of headquarters for the Seabed Authority and for the LOS Tribunal.

By far the most important task of the Preparatory Commission is likely to be the preparing of procedural provisions (rules, regulations and procedures) in accordance with Article 17, Annex III, which are necessary for setting in motion the Seabed Authority. The Final Clauses negotiated during the 1980 Geneva half-session of the convention now contain, in Article 308, Paragraph 4, a provisional application of the procedural rules for the Preparatory Commission up to the time of their endorsement by the Seabed Authority, which for its part can make decisions in this area only by way of a consensus, according to the newly formulated Article 161, Paragraph 7d.

Finally, the Preparatory Commission is to be responsible for "other matters which fall within its field of activity...."⁵ According to the present state of negotiations, this formulation entails the possibility of establishing, by way of the Preparatory Commission, a temporary legal protection for seabed mining in the interim period up to the coming into force of the convention.

The chances for a later ratification of the LOS Convention by the parliaments of important industrial states will depend on in what way the interim legal protection and the above-mentioned procedural provisions are regulated by the Preparatory Commission. More explicit proposals for investment protection were made by the United States in April 1980, in which the United States⁶ establishes the relationship between the Preparatory Commission and the interests of the industrial countries in interim investment protection.

What is at issue here are those investments which must be undertaken for the development of technology in the next few years in close connection geographically with the area being mined, even before the going into effect of the convention--thus, for example, charting, exploration, and smaller pilot facilities, but not large production units, which can be justified only after adoption of all the procedural provisions. According to the American proposals, the international protection of investments geared to mining areas can be achieved by way of the Preparatory Commission if three conditions are fulfilled:

a) Priority for investors from signatory states if later applicants apply for mining concessions to the same area (so-called grandfather rights);

b) Corresponding priority right for the Enterprise with respect to a prospected area of equal value as defined by the parallel system;

c) In the case of rival applications, conversion of the priority claims into legal claims on mining the field as soon as the convention has come into force, subject to the fulfillment of all other objective prerequisites of the application in accordance with Annex III. This does not signify a true legal title to such a conversion, but rather a preservation-of-evidence regulation (evidence for priority).

The two first-mentioned conditions can be met by the Preparatory Commission by way of effecting at an early date a simplified application procedure. The transition to assured rights would have to be included in the convention itself, since in this respect what we have are exceptions to Article 6, Paragraph 3 of Annex III. As an additional benefit, this so-called "advance site designation system" would prepare the Enterprise for its work through the strict application of the parallel system as early as in the pre-treaty stages, would substantially hasten the date of commercial production, and would enable the Authority to bring in its own revenues at an earlier date.⁷ Finally, this system would also create an incentive for states to sign the convention or the final act without delay, so as to become members of the Preparatory Commission. On the other hand, the parliaments which are responsible for ratification will be annoyed that their approval is being virtually bypassed through the provisional application of the convention. The developing countries are still unfavorably disposed to the American proposals, but they did not resist when these questions were included in the conference calendar for the tenth session.⁸

The current state of deliberations in connection with a Preparatory Commission and with the interim investment protection clearly reveals that very important questions about the practical implementation of deep-sea mining confront the Preparatory Commission, and that consequently one can expect extremely difficult negotiations in the form of a "conference within the LOS conference." In addition to the unclarified questions on general maritime law and the growing dissatisfaction with the overall fairness of resource distribution, the problem of the Preparatory Commission presents yet another major obstacle on the road to a new LOS convention.

FOOTNOTES

1. Summary Evaluation of the Conference

- 1 ICNT rev. 2, A/Conf 62/WP 10 rev. 2 of 11 April 1980 was the intermediate result of the 1980 New York half-session.
- 2 A/Conf 62/WP 10 rev. 3 of 27 August 1980 was the result of the 1980 Geneva half-session.
- 3 Explanatory Memorandum A/Conf 62/WP 10/rev. 3/Add. 1 of 28 August 1980.
- 4 A/Conf 62/L 63 of 27 August 1980.
- 5 See in this connection especially "Aspekte der Seerechtsentwicklung" [Aspects of Maritime-law Development], published by Wolfgang Graf Vitzthum, "Staat und Wirtschaft" [State and Economy] workbooks, Munich, 1980, there p 329: "Material Fairness Aspects of Maritime-law Development" (Vitzthum); nine-state proposal (Nepal, Austria, and others) for financial levies by the coastal states to the so-called Common Heritage Fund, C 2/Informal Meeting 45 of 16 August 1979; see also footnote 14 (below).

- 6 Jenisch, in *AUSSENPOLITIK*, 1/80, 1/79, and 1/78.
 - 7 Incorporated in ICNT rev. 2 and rev. 3, see above, footnotes 1 and 2.
 - 8 A/Conf 62/C 3/L 34 of 15 August 1980, Add. 1 of 14 August 1980, and Add. 2 of 15 August 1980; A/Conf 62/L 61 of 25 August 1980 and L 57 rev. 1; other negotiations on Articles 263 and 264 are conceivable.
 - 9 Dispute settlement A/Conf 62/L 59 of 23 August 1980; Final Clauses A/Conf 62/L 60 of 23 August 1980, and FC/21 rev. 1 of 19 August 1980 and Add. 1 of 22 August 1980; General Provisions A/Conf 62/L 58 of 22 August 1980; Preamble A/Conf 62/L 49 of 27 March 1980 and Add. 1 of 29 March 1980 and Add. 2 of 29 March 1980.
 - 10 A/Conf 62/BUR 13 rev. 1 of 28 August 1980 (reissued for technical reasons).
 - 11 Latest proposals of Italy (A/Conf 62/98 of 31 March 1980) and of Peru (Participation of International Organizations), unpublished working paper of 13 August 1980.
 - 12 See below, number 4.
 - 13 See below, number 4.
 - 14 A/Conf 62/SR 134-141 (September 1980, not yet published in full) and A/Conf 62/BUR/SR 57 of 9 September 1980.
 - 15 Sources: NEPTUNE, No 2 of 4 April 1975.--Platzöder in: "U. N. LOS Conference and German Sea Interests," series of publications by the Land Government of Schleswig-Holstein, No 8/1980, p 82 ff, with various references.--Ocean charts of the Aachen Technical College (only Pacific Ocean and Indian Ocean).
--Author's own calculations.
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2. Negotiations on General Maritime Law/Law on the Sea Zones
 - 1 Art. 76, Paragraph 1, in conjunction with Art. 55.
 - 2 So-called Aguilar Proposal A/Conf 62/L 51 of 29 March 1980.
 - 3 C 2/Informal Meeting/65 of 21 August 1980 and A/Conf 62/L 51, p 3.
 - 4 Another peculiarity is found in Art. 47, Paragraph 8, which contains special rules for the calculation of archipelago basis lines in the case of "limestone islands," and one wonders: How about other islands (cui bono?).
 - 5 Details on the continental-shelf commission in Annex II, see also A/Conf 62/L 51.
 - 6 State of discussions of the New York half-session in A/Conf 62/L 51 of 29 March 1980.
 - 7 United States, C 2/Informal Meeting 49 of 21 August 1979.

- 8 Indonesia, C 2/Informal Meeting 56 of 20 March 1980.
 - 9 Japan, Republic of Korea, C 2/Informal Meeting 60 of 21 March 1980.
 - 10 Informal Paper No 14 of 18 August 1980.
 - 11 For example, in Art. 22.3 a, Art. 60.5.
 - 12 List of the motions in A/Conf 62/L 51 of 29 March 1980; see also A/Conf 62/134-141.
3. State of Negotiations on the International Seabed Regime
 - 1 A/Conf 62/WG 21/3 of 18 August 1980 with the corrigenda 1-5 and the addenda 1 and 2, as well as A/Conf 62/C 1/L 28 and Add. 1 of 23 August 1980.
 - 2 See A/Conf 62/SR 134-141.
 - 3 Art. 150 g, 161.7 d, 162.2 l of the draft convention, rev. 3.
 - 4 Art. 140, 160.2 f.
 - 5 See A/Conf 62/C 1/SR 49 of 29 August 1980 (Spain, Switzerland, Austria, Israel, Finland, Turkey, Portugal).
 - 6 Details in A/Conf 62/C 1/L 28 of 23 August 1980.
 - 7 See Art. 162.2 j in conjunction with Art. 6, Annex III.
 - 8 See Art. 151.7 in conjunction with Art. 7, Annex III.
 - 9 A/Conf 62/C 1/L 28 of 23 August 1980, p 5.
 4. Preparatory Commission and Interim Legal Protection for Seabed Mining
 - 1 See Doc. FC/1 (Final Clauses) of 23 July 1979; A/Conf 62/BUR 13 rev. 1 of 28 August 1980.
 - 2 PC/1 (Preparatory Commission) of 3 March 1980; A/Conf 62/L 55 of 1 April 1980.
 - 3 PC/8 of 13 August 1979 with a synoptic description of the precedences for preparatory commissions in the U. N. system.
 - 4 PC/2 of 14 March 1980.
 - 5 See PC/2, Number 8.
 - 6 Doc. 1A/1 of 2 April 1980 and 1A/1 revised of 11 August 1980.
 - 7 See NEPTUNE No 17, August 1980 (interview with U. S. experts Knecht and Meyer).
 - 8 Working plan for Tenth Session in A/Conf 62/BUR 13 rev. 1 of 28 August 1980.

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PAPER DECRIES U.S. 'SCUTTling' OF LOS CONFERENCE

LD170959 Paris LE CONTINENT in French 12 Mar 81 p 1

[Editorial: "Looting Treasures of the Sea"]

[Text] The foreseeable failure of the Conference on the Law of the Sea will pass unnoticed--a failure which will cause no great surprise among observers. All big so-called dialogue summits such as UNCTAD, GATT, the North-South dialogue and so forth have dragged on pitifully from partial success to partial success amid growing indifference. No one seems to believe in it all any longer.

However, the scuttling of the New York conference by the Americans only 24 hours after its opening is of much more far-reaching significance. At a stroke, Reagan has just swept aside 7 years of negotiations and compromises. This is a true image of present attitudes, whether openly expressed or not, and above all a very big mortgage on the future.

In fact, our world, 71 percent of whose surface is covered by water, can exist only thanks to the oceans. And mankind will be able to survive only if they are utilized in a rational and productive manner. It is the last virgin sphere and also the last chance.... For the mainland, which has been divided into spheres of influence, submitted to pressures and ruled by monopolies, finds it difficult to change at a speed consistent with present needs. Oceans, which are to be reclaimed, represent a unique opportunity for starting again on a basis fair to the entire international community.

Now what can be observed? Simply that, under pressure from the multinational groups which control world mineral resources, the new White House team rejects the new system for the exploitation of polymetallic nodules, in contravention of undertakings given by its predecessors and without consulting its allies. The value of those famous "potatoes" of cobalt, copper, manganese and nickel which line the ocean floor has been estimated at \$2 trillion. Such U.S. companies as Kennecott Copper, Lockheed and U.S. Steel have already spent \$200 million for the purpose of studying the feasibility of exploiting those resources.

This is completely at variance with the spirit which prevailed only a few days ago among the delegations working on a new Law of the Sea according to which these resources are "the common heritage of mankind."

All hope has not been lost, because the United States needs to achieve an agreement on the security of an free passage through the 116 straits on which sea traffic throughout the world depends--an agreement inseparable from a global Law of the Sea Treaty. But the fact remains that a spring has again been broken.

'NRC HANDELSBLAD' COMMENTS ON U.S. LOS DECISION

LD171641 Rotterdam NRC HANDELSBLAD in Dutch 12 Mar 81 p 7

[Editorial: "Blunt Ax"]

[Text] The Reagan administration's working methods are threatening to have a disastrous effect on relations between the industrialized and the developing countries. In a couple of months the clock of the North-South dialogue has been turned far back. Just as in the Cold War years, Washington seems to see the Third World countries more as pawns or dominoes in the field of East-West tension. Other notions--such as the concept of global interdependence--seem to have been consigned to the lumber room.

A first indication of this was given by all the planned economies in the 1982 budget, which had already been introduced by President Carter. In the area of foreign aid, and especially in the case of the financial support to institutions like the World Bank, such serious cuts were made with a blunt ax that Secretary of State Alexander Haig found it too much. Since then the cuts have been somewhat more controlled. But the result remains disappointing.

This was followed last week by the unexpected announcement that the U.S. Government needed more time to study the results achieved so far by the Law of the Sea Conference and that the 10th round of negotiations, which began this week, must wait for the outcome of this. Shortly afterward it became known that the United States was dissatisfied with the articles in the draft treaty regulating the exploitation of the seabed, which give an important role in areas outside the 200-mile economic zones to an international authority. Finally it became known that Washington wants to completely dismantle the entire 320-article document which is now being given final consideration and about which, following years of negotiation, far-reaching agreement has been reached.

This behavior, testifying to a lack of sensitivity, has bewildered friend and foe alike. The Western allies are properly saying little about the fact that they have not been consulted, and the developing countries are now understandably trying to work out what the United States' word in the North-South dialogue is still worth.

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